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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th August, 2023

No. 13/2/9-HII(2)-2023/ 11379.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 1/2022 dated 13.05.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

HARPREET SINGH - STAFF MEMBER, AGED ABOUT 38 YEARS S/O BALBIR SINGH, R//O VILLAGE TIRA, P.O. TIRA, TEHSIL KHARAR, DISTRICT SAS NAGAR MOHALI, PUNJAB (Workman)

AND

- (1) INFOMAX MANAGEMENT SERVICES PVT. LTD., SCO NO. 186-188, 3rd FLOOR, CABIN NO.6, SECTOR 17, CHANDIGARH THROUGH ITS BRANCH MANGER MANOJ CHAMOLI, MOBILE NO.9876035972
- (2) INFOMAX MANAGEMENT SERVICES PVT. LTD., HEAD OFFICE 4E, 16, 17, TYPE 4, BLOCK B, JHANDEWAL EXTENSION, HANDEWLA, NEW DELHI -110055 THROUGH ITS DIRECTOR SANJEEV SARIN, MOBILE NO. 9811012879. (Management)

AWARD

1. Harpreet Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).
2. Briefly stated the averments of claim statement are that the workman was working with the management as Staff Member at Chandigarh office. He joined in the year 2009. Since then the workman was working with the management without any break. The salary of the workman working as Staff Member is

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₹ 7,300/- per month plus the amount of PF deposited in his PF account plus conveyance charges. The workman was initially receiving the salary through cheque and later on the same is deposited in his account. During the entire tenure of service with the management there was no complaint against the workman and there was no complaint from any customer against him. Work & conduct of the workman was up to mark. Job profile of the workman was to collect the cheques from the field (customers of the management) and handover to persons authorised by the management. On 18.08.2020 the workman and other similar situated persons came to their work place but the Branch Manager Sh. Manoj Chamoli, Chandigarh Branch did not allow them to join their respective duties. Even the Branch Manager did not pay any heed to the request of the workman to join duty and told the workman that his services are no longer required without assigning any reason. Action of the Branch Manager Manoj Chamoli terminating the services of the workman without any charge-sheet, inquiry and without advance notice and compensation, is illegal, unlawful and wrongful. The workman along with other terminated persons filed a complaint dated 17.08.2020 against the Branch Manager Manoj Chamoli before the police authorities and during proceedings therein the Branch Manager admitted his fault regarding illegal termination / retrenchment of the workman and given an undertaking dated 25.08.2020 wherein he mentioned that he will allow the workman and other similar persons, whose services were terminated, and can join their respective duties from 26.08.2020. On 26.08.2020 when the workman and other similar situated persons came to join their duties found that the Branch Manager has locked the office and not picking their phones. Photos of the office having locked with the date of newspaper are with the workman. Thereafter the workman sent their joining report through post. Copy of the postal receipt are with the workman and further the receipts from the website of postal department showing delivery of the letters are also with the workman. The workman also sent a demand notice to the management to accept his claim but the same is in vain. The workman has completed 240 days service with the management therefore the management has not complied with the provision of Section 25-F of the ID Act. The management retained some fresh hand in service or also got done work from competitive agency employees so the action is against the principles of natural justice. The management has not complied with the provisions of the ID Act. The management has illegally terminated the setrials of the workman w.e.f. 18.08.2020. The management has not issued any advance notice to the workman, never paid compensation, never conducted any inquiry and issued any charge sheet at the time of termination of the workman. Even no personal hearing was given to the workman at the time of termination. The management with malafide intention to cover their own act issued notices with regard to strike held by the workman. Those notices are afterthought act of the management and on that particular date the workman was on duty and in this regard he has sufficient proof. The management has violated the provisions of Section 25-F, 25-G & 25-H of the ID Act. The workman is unemployed after termination and is not gainfully employed anywhere though he has tried his best. Prayer is made that the services of the workman be reinstated with continuity of service, full back wages from the date of his termination and with all consequential benefits.

3. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing joint written statement on 20.07.2022, wherein preliminary objections are raised on the ground that the present industrial dispute has been raised against the wrong name of the management. The complete and correct name of the management is 'M/s Infomax Management Services (India) Pvt. Ltd. and not 'M/s Infomax Management Services Pvt. Ltd. Since the present industrial dispute has been raised against the wrong / incomplete name of management so the present industrial dispute of the workman is strictly liable to be dismissed. The workman has not approached this Court with clean hands and opted to hide some key relevant facts in order to achieve his ulterior motive. It is submitted that when the workman started absenting from his duties un-authorisedly w.e.f. 18.08.2020, the management sent him letters (s) dated 22.08.2020, 31.08.2020, 02.09.2020 & 15.09.2020 through speed post asking the workman thereby to resume on his duties. In reply to the demand letter of the workman, the management sent reply dated 24.09.2020 under speed post reiterating their stand that they never terminated the services of the workman and asked the

workman to join back on his duties. Before the Learned Conciliation Officer / Assistant Labour Commissioner during the conciliation proceedings, the management submitted a written submission on 21.10.2020, 04.11.2020 and also moved an application on 21.12.2020 asking the workman thereby to resume back on their duties and reiterated that the management had never terminated their services rather the workman had himself started absenting from his duties un-authorisedly w.e.f. 18.08.2020. Despite all above efforts of the management, the workman kept upholding his adamant attitude and never accepted the offer of the management. Hence, the present industrial dispute of the workman is strictly liable to be dismissed in the interest and furtherance of justice. The workman is not entitled to raise the claim of reinstatement before this Court as the workman had himself refused to join back on his services before the Conciliation Officer on 05.01.2021. The said factum also got recorded in the quasi judicial proceedings. Considering number of correspondences by the management, offer before the Learned Conciliation Officer given by the management and refusal by the workman to join back on his duties, the presumption can be very easily drawn that the workman has abandoned his services and pursuing the present claim with the sole motive to satisfy his ulterior motive and mala fide intention, therefore, the present industrial dispute may be dismissed in the interest of justice.

4. On merits, it is pleaded that the workman started working for the management w.e.f. 12.01.2016 as a Computer Operator. The workman was duly provided with the letter of appointment at the time of his recruitment by the management. The services of the workman never got illegally terminated by the management rather the workman had himself started un-authorisedly absenting from his duties w.e.f. 18.08.2020. The management extended numerous offers to the workman to join back on his duties but unfortunately to no avail. Moreover, the workman refused to join back on his duties before the Learned Conciliation Officer on 05.01.2021. The workman had always been provided with wages in accordance with the rate as declared by the concerned State Government besides other legal facilities. It is a matter of record that the workman initially received the salary through cheque and later on the same deposited in his account. It is denied that there was not even a single complaint against the workman or the conduct of the workman was up to mark. The management always opted to ignore the mistakes(s) of the workman in order to maintain cordial relation in between the employer-employee and ensure peaceful working environment in the establishment. It is a matter of record that job profile of the workman is to collect the cheques from the field (customers of the management / organisation) and handover to persons authorised by the management. However, it is submitted that due to the nature of job, the workman used to serve only from 10 A.M. to 01:00 P.M. during his ordinary course of service. It is denied that the action of the Branch Manager - Manoj Chamoli, terminating the workman without any charge sheet or inquiry or without any advance notice / compensation is illegal. It is submitted that firstly, the services of the workman were never illegally terminated by the management rather he had himself started absenting from his duties. Secondly, even otherwise the services of the workman cannot be terminated by the person below the appointing authority. It is a matter of record that the workman along with other persons filed a complaint dated 17.08.2020 against the Branch Manager Manoj Chamoli before the police authorities. However, the issue regarding illegal termination falls beyond the jurisdictional scope of police authorities. Secondly, the workman by invoking his personal contacts / relations approached one - Mr. Ajay Singh, who was then deployed at Mohali Police Station. He called the Branch Manager through his mobile Phone No.+91-9501610016 on 25.08.2020 and asked him to report at Mohali P.S. immediately. When Sh. Manoj Chamoli, Branch Manager reached the police station, he was pressurized to write such letter which neither he ever intended to nor the contents of the same bear any reality. When the management came to know about the entire incident, the management directed the Branch Manager to file a complaint narrating all true facts at Sector 17 P.S. Chandigarh. Hence, the statement obtained by the Branch Manager by exercising force and coercion does not hold any veracity in law and therefore, the same is liable to be rejected in the interest of justice. The workman never turned back on his duties after absenting un-authorisedly from his duties w.e.f. 18.08.2020.

The workman never came to join his duty on 26.08.2020. The management replied to the demand notice vide letter dated 24.09.2020 and asked the workman to join back on duties immediately. It is a matter that the workman completed 240 days or not. The workman was sent number of correspondences to join back and offer to join back was also extended before the Conciliation Officer. However, when the workman refused to join back duties, the management was left with no other alternative but to get the work done by engaging fresh hands. The management has not committed violation of any of the provisions of the ID Act. Further averments made in the preliminary objections are reiterated and rest of the averments of claim statement are denied. Payer is made that the present claim / industrial dispute of the workman does not merit any consideration and may be dismissed.

5. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 05.12.2022 :—

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits ? OPW
3. Whether the workman has not approached the court with clean hands and concealed the material facts ? OPM
4. Whether the claim statement is not maintainable in the present form ? OPM
5. Relief.

7. On joint request of the parties, the case taken up in Pre-Lok Adalat on 03.05.2023, wherein the workman got recorded his statement, which is reproduced as below :—

"Stated that I have received an amount of ₹ 70,000/- through NEFT which bears Reference No. PUNBH23123316869 drawn on Indian Bank, Branch Sector 40-C, Chandigarh towards full & final settlement of my claims including right of reinstatement. Full & final settlement receipt is Exhibit 'C1', which bears my signatures as well as thumb impression. I do not intend to further pursue my present industrial dispute being compromised. My present industrial dispute may be disposed off accordingly in the Lok Adalat."

Statement of the workman is countersigned by his Representative.

8. On 13.05.2023, case taken up in National Lok Adalat. Heard. In view of the statement of the workman recorded on 03.05.2023, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

The 13.05.2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th August, 2023

No. 13/2/4-HII(2)-2023/11381.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 24/2022 dated 05.06.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

BITTU KUMAR, GURU THE BAHADUR COLONY, NEAR MONU MEDICAL, RAJ PURA,
DISTRICT PATIALA. (Workman)

AND

M/S LEADS SPORTS PVT. LTD. SHOP NO. 116, 1ST FLOOR, ELANTE MALL, PHASE - 1,
CHANDIGARH THROUGH ITS MANAGER. (Management)

AWARD

1. Bittu Kumar, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed by the management as Retail Executive on 13.05.2016. The workman remained in the un-interrupted employment up to 16.04.2021, when his services were illegally and wrongfully terminated by refusing of work. The workman was drawing ₹16,500/- as wages plus incentive on the sale per month. On 17.04.2021, the workman went to attend his normal duty but he was refused work by the management without assigning any reason and notice. The refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25-F of the ID Act. No charge-sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. For his re-instatement workman served upon the management a demand notice dated 07.08.2021. The management neither denied the contents of demand notice nor took the workman back on duty. The Assistant Labor Commissioner (ALC)-cum-Conciliation Officer, U.T, Chandigarh was requested for his intervention. The management did not appear before the Conciliation Officer on any date for settlement. The termination is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. Prayer is made that the workman may be re-instated with continuity of service along with full back wages without any change in his service condition.

3. On notice, the management contested the claim statement by filing written statement on 07.09.2022 wherein preliminary objections are taken on the ground that the reference made by the authorities and the claim filed by the workman before this court is factually incorrect and legally untenable and liable to be rejected. The workman has presented misleading facts. The present claim in the present form is not maintainable. The workman has concealed the material facts. The workman at the time of leaving the management company has not issued any intimation which is required as per the settled law. The claim statement is bad for non-joinder of necessary party. The workman has no locus-standi.

4. Further on merits, it is stated that the management has not denied that job tenure of the workman. It is a matter of record that the management appointed the workman as Retail Executive on the given date. It is a matter of record that the workman was un-interruptedly employed up to 16.04.2021. It is denied that the services of the workman were illegally and wrongfully terminated by refusing of work. The management never terminated the workman from job/service. If the workman has written communication in that regard from the answering management or reference in that context, the workman need to prove with sufficient proof and lead to produce before this Tribunal. It is correct that workman was drawing ₹16,500/- as wages plus incentive on sale per month. The management always paid salary to their workers on time and workman also has got his salary on regular period. After getting salary on 07.04.2021, the workman immediately absented from the store w.e.f. 13.04.2021 to till date without giving any prior intimation to the store/management company. The management has found that workman has neither given prior notice to leave, which is mandatory, nor submitted things belonging to the management, till date. The management has found that in workman's job tenure, store had a shrinkage of rupees more than ₹ 1,50,000/- and the said fact was also conveyed / informed to each working staff member in the store. It was also apprised to all the working store members / workers that loss which was faced by the store due to negligence of workmen/employees will be equally divided into all store team members/working workers, in which the workman was also inclusive. The above said fact was also conveyed further to higher official / concerned official by the management through e-mails. The demand notice for re-instatement was neither served to the management nor reached the management nor received by the management on any instance. No such notice or any intimation was received by the management in their office from the ALC, in that situation the question of appearance before the said authority / commissioner never exist or arise. There is no illegal, wrongful, motivated termination from the part of the management and against the principles of natural justice and no such unfair labour practice has been done on the part of the management and against the workman, in any way. The prayer made by the workman is vague and void because management never terminated the workman from his job / services and for the same demand of re-instatement in employment / service of workman is a bundle of lie and the outright present proceedings were initiated by the workman just to save his skin from the wrong or negligence which he has done with the management company and to prove himself right before the authorities and before this Hon'ble Tribunal. The workman remained unemployed due to his own act and conduct because the management had tried to connect with the workman a lot of times via-through the contact number but neither the workman had picked up the call nor did he contact to management for any settlement or grievance and for the un-employment of workman there is no responsibility of the management in any manner. Rest of the averments of claim statement are denied as wrong and prayer is made that the workman is not entitled to any relief.

5. Workman filed rejoinder wherein the contents of the written statement are denied except admitted facts and averments of claim statement are reiterated.

6. From the pleading of parties following issues were framed vide order dated 18.10.2022 :—

1. Whether the termination of the claimant-workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all consequential benefits, as prayed for ? OPM
3. Whether the claimant has no locus-standi ? OPM
4. Whether the statement of claim is not maintainable ? OPM
5. Whether the statement of claim is bad for non-joinder of necessary parties ? OPM
6. Relief.

7. In evidence workman Bittu Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 07.02.2023, workman closed his evidence in affirmative.

8. On the other hand, management examined MW1 Pardeep Singh Negi, Senior Area Sales Manager, M/s Leeds Sports Pvt. Ltd., who tendered his affidavit Exhibit 'MW1/A' along with attested copy of documents Exhibit 'M1' to 'M3' and Mark 'MX'.

Exhibit 'M1' is attendance record of April 2021 of employees including name of the workman shown at serial No.4, posted at Zirakpur Store.

Exhibit M2' is stock audit sheet dated 15.04.2021 of Zirakpur store along with details of shortage.

Exhibit 'M3' is stock audit sheet dated 21.01.2021 of Zirakpur store along with details of shortage.

Mark 'MX' is hardcopy of e-mail dated 21.01.2021 sent to the management of Cosmo Mall seeking permission to conduct audit at night.

9. Management also examined MW2 Nem Singh, Store Manager M/s Leeds Sport Pvt. Ltd., Store at Zirakpur, SAS Nagar, Mohali (Punjab) who tendered his affidavit Exhibit 'MW2/A' along with office copy of letter dated Nil issued from Mr. Pardeep Singh Negi, Area Sales Manager to Bittu Kumar vide Exhibit 'M3' through speed post vide postal receipts dated 22.04.2022 vide Exhibit 'M3/1' and Exhibit 'M3/2'.

10. On 29.05.2023 Learned Representative for management closed evidence. It is pertinent to mention here that Exhibit 'M3' is numbered twice. In order to avoid any ambiguity, the letter dated Nil issued from Pardeep Singh Negi, Area Sales Manager to Bittu Kumar is here-in-after referred as Exhibit-M3/AA.

11. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 :

12. Onus to prove this issue is on the workman.

13. Under this issue workman Bittu Kumar examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for sake of brevity.

14. On the other hand, Learned Representative for management referred testimony of MW1 Pradeep Singh Negi, MW2 Nem Singh who vide their respective affidavits Exhibit 'MW1/A' and Exhibit 'MW2/A' deposed the entire contents of the written statement, which are not reproduced here for the sake of brevity. MW1 has supported his oral version with documents Exhibit 'M1' to Exhibit 'M3' and Mark 'MX'. MW2 has supported his oral version with documents Exhibit 'M3/AA', Exhibit 'M3/1' and Exhibit 'M3/2'.

15. For the oral as well as documentary evidence lead by the parties it comes out that admittedly the workman was appointed by the management of M/s Leeds Sports Pvt. Ltd. on 13.05.2016 and he continuously worked up to 15.04.2021. In this regard MW1 in his cross-examination admitted as correct that the workman was appointed on 13.05.2016 and continuously worked up to 15.04.2021.

16. The workman has pleaded that he was doing job with the management in its store situated at Elante Mall, Chandigarh. On the other hand, the management has taken the plea that the workman was transferred from Elante Mall, Chandigarh to Zirakpur Store. The plea taken by the management that the workman at the time of his alleged termination was employed at Zirakpur, SAS Nagar, Punjab, does not stand proved because MW1 in his cross-examination stated that the workman was issued identity card by the management. He has seen original identity card, copy of same is Exhibit 'W1' which was issued to the

workman by the management. The identity card was issued for the purpose of entry to Elante Mall, Chandigarh. MW1 in his cross-examination further stated that no transfer letter was issued to the workman that he has been transferred to Zirakpur. In this case MW1 has brought into evidence documents Exhibit 'M1', which is a print out obtained from the computer. The typed portion of the said print out does not bear any address of management office / store at Zirakpur. In order to connect the document Exhibit 'M1' with Zirakpur Store, the management has affixed its seal incorporating its address of Zirakpur. MW1 in his cross-examination admitted as correct that if seal of the management firm of Zirakpur is not affixed then it cannot be said if Exhibit 'M1' relates to the employees deputed at Zirakpur. MW1 further stated that Exhibit 'M1' bears a period from 01.04.2021 to 31.04.2021. In view of the aforesaid version of MW1 accompanied with the fact that there is no order of transfer of the workman from Elante Mall Chandigarh to Zirakpur, it cannot be said that the workman at the time of termination from job was working at Zirakpur Store of management. Moreover, the letter Exhibit 'M3/AA' is issued to the workman by the Area Sales Manager of Leeds Sports Pvt. Ltd. under his seal and signatures. The seal of the management affixed on Exhibit 'M3/AA' is of its office situated at Elante Mall, Chandigarh.

17. The workman has alleged that on 17.04.2021 when he went to attend his normal duty, the management refused him work without assigning any reason. On the other hand, the management has taken the plea that it has not terminated the services of the workman. The management had given salary to the workman on 07.04.2021 as per regular salary day. Thereafter from 13.04.2021, the workman is absent from the store. The workman has neither issued any prior notice nor submitted the things belonging to Leeds Sports Pvt. Ltd. till now. Moreover, the management has found shortage / shrinkage of ₹ 2,06,536/- during the job tenure of the workman in the store and the said shortage / shrinkage was equally divided to all the store team members as reflected in Exhibit 'M3/AA'. Learned Representative for the workman argued that the alleged shrinkage cannot be connected to the workman. There is no record of management showing basis of deduction of shrinkage. The amount deducted on the pretext of shrinkage is illegal, unlawful and arbitrary. To my opinion the argument advanced by Learned Representative for the workman carries force because MW2 in his cross-examination recorded on 17.04.2023 stated that the amount of shrinkage is reflected in the accounts maintained by the Accounts Branch, headed by official designated as HOD Accounts. He can produce the accounts relating to entries of shrinkage in question. The remaining cross-examination of MW2 was deferred with direction to bring the aforesaid record. MW2 in his remaining cross-examination recorded on 18.05.2023 stated that he has not brought any record showing the basis of deduction of shrinkage. Volunteered, he has brought the record of ledger account for the period w.e.f. 01.01.2021 to 10.04.2021 showing the deduction of shrinkage with copies of Journal Vouchers and copy of same is Mark 'MX'. To my opinion, the document Mark 'MX' is not sufficiently proved into evidence being photocopy and no reliance can be placed upon the same. Furthermore, MW1 in his cross-examination stated that the appointment letter does not contain any clause that in case of shortage / shrinkage, the amount will be deducted from the account of the worker. Above all under Section 7 of the Payment of Wages Act, 1936, deduction towards shortage / shrinkage from the salary of a workman is unauthorized. An employee cannot make deductions of any kind except those specified under the said Act.

18. As far as the demand notice raised by the workman is concerned, MW1 in his cross-examination firstly admitted as correct that the worker had issued a demand notice. Again said, no demand notice was received from the workman. From the perusal of the failure report bearing memo No. 350 dated 24.02.2022 it is proved that the management did not appear during the course of conciliation proceedings within the stipulated time period before the ALC-cum-Conciliation Officer, U.T, Chandigarh due to which demand notice remained unsettled at the level of Conciliation Officer.

19. The fact remained admitted between the parties that workman remained in un-interrupted employment of management from 13.05.2016 to 15.04.2021. Thus, the workman has completed 240 days of continuous service in 12 calendar months preceding his termination (services being terminated on 17.04.2021). Thus, the workman fulfills the requirement of Section 25-B of the ID Act. Once the workman fulfills the requirement of Section 25-B of the ID Act then the employer is bound to follow the conditions precedent to retrenchment of workman as laid down in Section-25-F of the ID Act. For better appreciation Section-25-F of the I.D. Act is reproduced as below :—

"25F. Conditions precedent to retrenchment of workmen - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

As per the contents of Exhibit 'M3/AA' the workman was absent from duty w.e.f. 13.04.2021 whereas MW1 in his cross-examination admitted as correct that the workman was appointed on 13.05.2016 and continuously worked up to 15.04.2021. Even if the workman was absent from duty, in that situation also the management was required to issue show cause notice or charge-sheet to the workman against his alleged misconduct on account of alleged absence from duty. MW1 in his cross-examination stated that no charge-sheet was issued to the workman that he has absented from duty. No domestic inquiry was conducted against the workman. No retrenchment compensation was given to the workman. To my opinion from the aforesaid version of MW1 it is duly proved on record that management has violated the provision of Section 25-F of the ID Act. Before terminating the services of the workman, the management has neither issued one month's prior notice mentioning therein the reasons for retrenchment, nor paid notice pay in lieu of notice period nor paid any retrenchment compensation to the workman. Therefore, the retrenchment of workman is illegal.

20. Accordingly, this issue is decided in favour of the workman and against the management.

Issue No. 2 :

21. Onus to prove this issue is on the workman.

22. This issue is necessary consequence of Issue No.1. As discussed above, issue No.1 is proved in affirmative in favour of the workman, consequently, the workman is entitled to reinstatement with continuity of service along with 50% back wages.

23. Accordingly, this issue is decided in favour of the workman and against the management.

Issue No. 3 & 4 :

24. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

25. Onus to prove both these issues is on the management.

26. The workman on being aggrieved from his illegal termination, raised demand notice and took up the demand notice before the ALC-cum-Conciliation Officer, U.T, Chandigarh and due to non-appearance of the management before the Conciliation Officer within the stipulated time period, the conciliation proceedings were failed and the Conciliation Officer vide Memo No.350 dated 24.02.2022 advised the workman to approach the appropriate forum for the adjudication of his dispute. Thus, the workman was left with no other option than to approach this Court / Tribunal for adjudication of his dispute under the ID Act. Therefore, the workman has a valid cause of action and locus-standi. I do not find any defect so far maintainability of the present reference / claim statement is concerned.

27. Accordingly, both these issues are decided against the management and in favour of the workman.

Issue No. 5 :

28. Onus to prove this issue is on the management.

29. The management although taken the objection that the claim statement is bad for non-joinder of necessary parties, but has failed to show which necessary party is not joined, without which the present claim statement cannot be decided.

30. Accordingly, this issue is proved against the management and in favour of the workman.

Relief :

31. In the view of foregoing finding on the issues above, the industrial dispute is allowed. The workman is entitled to reinstatement with continuity of service along with 50% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

The 05.06.2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th August, 2023

No. 13/1/9997-HII(2)-2023/ 11383.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 17/2022 dated 24.05.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SURINDER PARSAD S/O SH. BALDEV PARSAD, R/O #384, VILLAGE HALLOMAJRA, CHANDIGARH. (Workman)

AND

M/S KANWAR TECNO, PLOT NO. 339, INDUSTRIAL AREA, PHASE-I, CHANDIGARH THROUGH ITS PROPRIETOR/OCCUPIER AND MANAGER. (Management)

AWARD

1. Surinder Parsad, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed as Helper by the management w.e.f. 11.04.2004 with various benefits and commitments. He was getting ₹12,100/- per month as wages and he had performed his duties to the best of his abilities. The management had issued only ESI card to the workman during his service. The workman had joined on 11.04.2004 but with mala fide intentions his name was entered in original record on 01.01.2007. The management had intentionally not issued appointment letter, attendance card, wage slip, designation letter, leave card, identity card and designation letter etc. to the workman. Attendance is marked in exercise note book at the workplace and further factual position of rate of wages, designation, working hour, over time hour, working days, leaves (without wages) and calculation of wages etc. was written in this note book. The management pays wages after obtaining his signature on blank voucher and blank paper without date. Whenever the workman required leave due to personal / family work or due to illness he availed only sanctioned leave so his services are uninterrupted and continuous with the management according to the provisions of Section 25-B of the ID Act. On 21.05.2009 the management terminated the services of the workman without giving any prior inquiry and one month's notice. When the workman approached the concerned authorities of the management, the authorities used foul language without giving proper reason of termination of service of the workman. This behaviour of the management clearly show their malafide intention in terminating the workman, which is bad in law and a clear violation of principle of natural justice. The workman is totally un-employed after his arbitrary termination of service by the management. The management has not issued any memo, charge sheet to the workman nor conducted any inquiry in any matter against the workman before termination. The workman requested several times to concerned officer to take him back on duty verbally or in writing but the management did not hear his genuine requests. The workman is facing all difficulties of un-employed person including starvation. At the time of refusal of work the management has not been offered notice pay and compensation to the workman according to the pre-condition of Section 25-F of the ID Act. Job of the workman exists as it is till date and juniors to the workman are still retained in service by the management. Therefore, there is violation of Section 25-F, 25-G & 25-H and other provisions of the ID Act. Illegal termination order has badly disturbed the survival of workman

and his family and there is no other source of income. Action of the management is based on the policy of 'Hire & Fire' and is colourable exercise of power. The workman after illegal termination sent representations to the concerned authorities of the management but all went in vain as no satisfactory action has been taken on the same till date. The management has never paid the wages to the workman according to law. The workman is entitled for 14 days sick leave with wages, 7 days casual leaves, 15 days earned leave with wages annually. The management forced the workman to work on Sunday. No single penny was given to the workman for his over-time wages. It is clear cut violation of The Minimum Wages Act on the part of the management. The management intentionally did not comply with the provisions of concerned law and infringed the mandatory provisions of law. The management misused the right and power to conceal the facts from the Government for their wrong and illegal /undue wishes goes against the poor workman. The workman after termination submitted a complaint to the Area Labour Inspector, Chandigarh. The management appeared before the Labour Inspector and did not produce any record despite advice of Labour Inspector. Verbal termination order is illegal, unjustified, mala fide and violation of all the other provisions of the ID Act. Prayer is made that termination order may be declared illegal and the workman be reinstated into service with continuity of service, with full back wages and all other applicable consequential benefits.

3. On notice, the management appeared through its authorized representative Shri Deepak Kaul. Thereafter none appeared on behalf of the management and on 21.07.2022 the management was proceeded against *ex parte*.

4. In *ex parte* evidence, the workman Surinder Parsad examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1', Exhibit 'W2' & Exhibit 'W2/1' and Mark 'A'.

Exhibit 'W1' is written complaint dated 10.06.2019 made to the Assistant Labour Commissioner, U.T. Chandigarh regarding illegal termination.

Exhibit 'W2' is written joining report dated 06.02.2020 sent through registered cover dated 07.02.2020 to the Proprietor of Kanwar Techno, Plot No.339, Chandigarh

Exhibit 'W2/1' original postal receipt dated 07.02.2020.

Mark 'A' is ESI card No.10148073 issued to the workman.

5. The workman also examined AW2 Sunita Rani - Social Security Officer, O/o Employees State Insurance Corporation (ESIC), Sector 19, Chandigarh, who has tendered on record documents Exhibit 'AW2/1' to Exhibit 'AW2/5'.

Exhibit 'AW2/1' is authority letter dated 19.01.2023 issued by Shri Dinesh Singh - Assistant Director, ESIC.

Exhibit 'AW2/2' is online copies of return of contribution for the period w.e.f. 01.04.2011 to 30.09.2011.

Exhibit 'AW2/3' is online copies of return of contribution for the period w.e.f. 01.10.2011 to 31.03.2012.

Exhibit 'AW2/4' is online copies of return of contribution for the period w.e.f. 01.04.2012 to 30.09.2012.

Exhibit 'AW2/5' is online copies of return of contribution for the period w.e.f. 01.10.2012 to 31.03.2013.

6. The workman further examined AW3 Gurmeet Singh - Senior Assistant, O/o Employees State Insurance Corporation (ESIC), Sector 29, Chandigarh, who has tendered on record documents Exhibit 'AW3/1' to Exhibit 'AW3/22'.

Exhibit 'AW3/1' is Form 01 relating to M/s Kanwar Techno Industries.

Exhibit 'AW3/2' is ledger / additional information, which is part of Form 01 / Exhibit 'AW3/1'.

Exhibit 'AW3/3' declaration Form of the workman.

Exhibit 'AW3/4' to 'AW3/18' is return of contributions under Employees' State Insurance Corporation incorporating details of contribution for the period from October 2012 to March 2013, April 2013 to September 2013, October 2013 to March 2014, April 2014 to September 2014, October 2014 to March 2015, April 2015 to September 2015, October 2015 to March 2016, April 2016 to September 2016, October 2016 to March 2017, April 2017 to September 2017, October 2017 to March 2018, April 2018 to September 2018, October 2018 to March 2019, April 2019 to September 2019 and October 2019 to March 2020 bearing the name of establishment Kanwar Techno Industries.

Exhibit 'AW3/19' is e-pehchan card under Employees' State Insurance Corporation incorporating the personal details, registration details, current employer details and family details of Insured Persons namely Surrender.

Exhibit 'AW3/20' is Insurance Policy No. 1710148073 (date of registration 01.09.2011) relating to insured person Surrender issued by Employees' State Insurance Corporation.

Exhibit 'AW3/21' is detail of total contribution for the period from 01.10.2009 to 30.09.2022.

Exhibit 'AW3/22' details of address of employer Kanwar Techno Industries.

On 24.05.2023 Learned Representative for the workman closed ex-parte evidence.

7. I have heard the arguments of Learned Representative for the workman and perused the judicial file.

8. In support of his claim, the workman examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibits 'W1', 'W2' and 'W2/1'.

9. The workman further examined AW2 Sunita Rani - Social Security Officer, O/o Employees' State Insurance Corporation, Chandigarh, who has brought the summoned record Exhibit 'AW2/1' to 'AW2/5' i.e. copies of return of contribution for the period w.e.f. 01.04.2011 to 31.03.2013 and deposed that the workman is covered under the ESI scheme w.e.f. 26.11.2007 through Kanwar Techno Industries, Chandigarh. The record prior to 01.04.2011 has been weeded out by the department being old record thus not available.

10. The workman also examined AW3 Gurmeet Singh - Senior Assistant, O/o Employees' State Insurance Corporation, Chandigarh, who has brought the summoned record Exhibit 'AW3/1' to Exhibit 'AW3/22'.

11. It is the stand of the workman that he was engaged by the management w.e.f. 11.04.2004 as Helper worker but the management had enrolled him under the ESI scheme w.e.f. 01.01.2007 and he had worked with the management up to 20.05.2019. On 21.05.2019 the management terminated the services of the workman without giving any prior notice.

12. As per Exhibit 'AW3/20' detail of Employees' State Insurance bearing No. 1710148073, date of appointment of the workman is 22.06.2015 and date of registration under the ESI scheme is 01.09.2011. From the contradictory entries of the above said record supports the plea of the workman that his date of appointment is incorrectly mentioned by the management as per its convenience.

13. From the oral as well as documentary evidence led by the workman, it is duly proved on record that the workman is working with the management as Helper w.e.f. 11.04.2004. His services were terminated by verbal order on 21.05.2019. The workman has completed 240 days of continuous service in 12 calendar months preceding his termination. Thus, the workman falls under the definition of continuous service under Section 25-B of the ID Act. Accordingly, Section 25-F of the ID Act applies to the workman. For better appreciation Section 25-F of the ID Act is reproduced as below :—

"25F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

In the present case before terminating the services of the workman, the management has neither given one months' notice in writing to the workman, indicating the reasons for retrenchment nor paid notice pay in lieu of notice period nor paid any retrenchment compensation to the workman. Therefore, the management has violated the conditions incorporated in Section 25-F of the ID Act. Consequently, the termination of the services of workman is illegal.

14. Besides, the evidence led by the workman has gone un rebutted and unchallenged as the management despite appearance through its representative, did not bother to contest the claim statement but preferred to be proceeded against *ex parte*. There is no reason to disbelieve the evidence led by the workman.

15. In view of the reasons recorded above, this industrial dispute is *ex-parte* allowed and the workman is ordered to be reinstated with continuity of service along with 50% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

The 24.05.2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 7th August, 2023

No. 13/2/2-HII(2)-2023/ 11385.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 103/2016 dated 02.06.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ANU SHARMA, AGED 40 YEARS, D/O SH. AMAR CHAND SHARMA R/O HOUSE NO.1065, SECTOR 23-B, CHANDIGARH (Workman)

AND

1. THE GOVERNMENT MEDICAL COLLEGE & HOSPITAL, CHANDIGARH, SECTOR 32, CHANDIGARH THROUGH ITS MEDICAL SUPERINTENDENT / DIRECTOR PRINCIPLE.
2. M/S KESHAV SECURITY SERVICES, CAMP OFFICE GMCH, SECTOR 32, CHANDIGARH
3. M/S KESHAV SECURITY SERVICE, NO.18, LOCAL SHOPPING CENTRE, 2nd FLOOR, MADAGIR, NEW DELHI - 110002
4. MS. AMANDEEP KAUR, PCS, FORMER ADDITIONAL DIRECTOR (ADMINISTRATION), GMCH-32, CHANDIGARH (Management)

AWARD

1. Anu Sharma, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed to the post of File Restorer on September 2003 (15.09.2004 regular). The workman was drawing monthly wages of ₹ 8,090/-. The workman continuously was continuously and regular remained in employment of the management from 01.09.2003 to 21.09.2014. During the service period the workman worked honestly and up to the satisfaction of her superior. On 21.09.2014, the management terminated the services of the workman saying that her services are no longer required. The action of management to terminate the services of the workman is highly illegal, unlawful, unjustified, uncalled for and inoperative, therefore, liable to be set aside inter-alia on the following grounds :—

- (i) The workman has completed more than 240 days of service in a calendar year.
- (ii) No compensation was given before terminating the services.
- (iii) No written notice before terminating the services was ever given to the workman by the management.
- (iv) Appropriate Government was not informed about the termination of the workman.
- (v) Post is still existing.

- (vi) Juniors and new persons have been appointed to the post of File Restorer.
- (vii) No inquiry was ever held before terminating the services of the workman.

It is further averred that the matter was reported to the Labour Inspector concerned but the management was adamant and nothing could be done. The demand notice dated 29.09.2016 under Section 2-A of the ID Act was raised before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh but the conciliation proceedings failed. The matter was referred to this Court for adjudication, as per law, vide Memo No.1418 dated 23.05.2016 issued by Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. The workman has not filed such or similar case earlier in the matter and this is the first case in the subject matter. This Hon'ble Court has got jurisdiction to hear and decide the present case. The workman has got no other remedy except to approach this Court by way of this statement of claim. Prayer is made that the workman may be reinstated into service with full back wages and all attendant benefits along with consequential relief of seniority, increments and revised pay etc. with interest @ 9% per annum.

3. On notice, management No.1 & 4 contested the claim statement by filing joint written reply / statement on 19.02.2018 wherein it is stated that Anu Sharma was deployed as File Restorer by the service provider M/s Keshav Security Services (P) Ltd., New Delhi in GMCH. As per service agreement the persons so deployed by the service provider for the execution of agreement shall be his employees for all intents & purposes and in no case, there shall be any relationship of employer & employees between the said persons & the GMCH, either implicitly or explicitly. The workmen so deployed by the contractor in the year 2012 were paid wages as per the rates fixed by the Assistant Labour Commissioner, U.T. Chandigarh. The fact that the workman continuously and regularly remained in the employment of management from 01.09.2003 to 21.09.2004, needs no reply. The workman was called by the Inquiry Officer during an internal inquiry of MRD Section to give her statement regarding the anonymous complaints but she left the office without giving the statement in spite of repeated telephonic messages. Anu Sharma thus, mis-conducted and did not cooperate in the inquiry proceedings. Hence, the contractor was issued show cause notice for the misconduct and insubordination of his employee. The reply to show cause notice submitted by the workman through the contractor was considered and found unsatisfactory. Accordingly, the contractor was asked that the services of Anu Sharma be replaced for this institute and utilize her services elsewhere outside the premises of GMCH vide this office letter No.GMCH-IEA(2)-(10)-2014/33899-900 dated 17.09.2014. The issue of defiance of Inquiry Officer was misconduct and insubordination by Anu Sharma due to which the work of their department was suffering. Therefore, the contractor was asked to replace her services elsewhere outside the premises of GMCH, 32, Chandigarh immediately. The settlement, if any has to be made, the same has to take place between the contractor and the workman. Rest of the contents of the claim statement are replied in a formal manner with the remarks that it needs no comments. Prayer is made that the claim statement being devoid of merits may be dismissed with cost.

4. Management No.2 & 3 contested the claim statement by filing joint written statement on 13.09.2017 wherein preliminary objections are based on the grounds that the claim statement is not maintainable in the present form. The answering management are service providers to various Governments as well other organisation as per their requirement. The workman nowhere made any allegation / drawback against the answering management. At the time of taking over the contract by the answering managements, the workman was already working in GMCH, Chandigarh / management No.1 under the previous service provider. No appointment letter was issued by the answering managements to the workman. On the basis of some anonymous complaint about the working of MRD branch in GMCH received by management No.1, to which the answering managements have neither any knowledge nor were provided with a copy, Dr. C. S. Gautam, GMCH, Sector 32, Chandigarh called the workman for inquiry and alleged that she refused to give her statement and asked the answering management being a service provider to show cause for the misconduct

of the workman. Pursuant to the aforesaid letter the answering managements conducted inquiry and took statement of the workman on 19.08.2014 and the copy of the same was supplied to the workman. The workman was provided equal opportunity of hearing. The aforesaid proceedings were sent to the office of management No.1 vide letter dated 19.08.2014. Since the workman stated that she being working with GMCH from the last 13 years and nothing adverse was ever communicated to her, therefore, the answering managements recommended that she may be given another chance to give her statement. The services of the workman were never terminated by the answering management rather the answering managements recommended her case to give her another chance as there had been no complaint about her work & behaviour in past 13 years. The workman has concealed the aforesaid material facts from this Hon'ble Court. Therefore, the case of the workman is liable to be dismissed on this ground alone. The workman submitted a representation to the management No.1 for reconsideration but the same was rejected by the management No.1. The services of the workman were never terminated by the answering managements and the workman never submitted any application to the answering managements for restoration of her services. The management No.1 vide letter dated 07.05.2015 asked the answering managements for replacing the service of the workman but yet the answering managements did not replace her services and she herself stopped coming to work on the directions of management No.1. The answering managements have not violated any provisions of the ID Act. The workman is misleading to this Hon'ble Court.

5. Further in parawise reply it is denied for want of knowledge that the workman was appointed to the post of File Restorer in September 2003. The fact that workman was drawing monthly wages ₹ 8,090/- needs no reply. It is admitted that workman continuously and regularly remained in the employment of the management from 01.09.2003 to 21.09.2014. The answering managements never terminated the services of the workman. Further similar stand is taken as taken in the preliminary objection. It is denied for want of knowledge that the post of File Restorer is still existing in GMCH, 32, Chandigarh and juniors and new persons have been appointed to the post of File Restorer. An inquiry was conducted by the answering managements as asked by the management. The answering managements were never adamant as the services of the workman were never terminated by the answering managements. Rest of the averments of claim statement are denied as wrong except para No.9 to 12 which are replied in a formal manner that the contents of these paras need no reply. Prayer is made that the claim statement qua the answering management may be dismissed and reference may be filed.

6. The workman filed rejoinder to the joint written statement of management No.1 & 4 and separate rejoinder to the joint written statement of management No.2 & 3, wherein the contents of the respective written statements except admitted facts of the claim statement are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following were framed vide order dated 03.04.2018 :—

1. Whether there is no employer-employee relationship between management No.1 & 4 and workman ? OPM-1 & 4
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
3. Relief.

8. In evidence the workman Anu Sharma examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A'. Her cross-examination was deferred. The workman again examined herself as AW6 and tendered her affidavit Exhibit 'AW6/A'. During entire proceedings of the case none of the parties raised any

objection for re-examining workman Anu Sharma. However, the management conducted cross-examination of AW6. Therefore, the evidence of the workman recorded as AW6 will be considered into evidence. The workman examined AW2 Sukhjit Kaur, Social Security Assistant, Employees Provident Fund (EPF) Organisation, Sector 17, Chandigarh; AW3 Rajesh Kumar, Senior Social Security Assistant, EPF Organisation, Sector 17, Chandigarh; AW4 Surinder Kumar, Branch Manager, ESIC, Sector 29, Chandigarh; AW5 Gurmeet Singh, Assistant, ESIC Branch Office, Chandigarh; AW7 Mohinder Soni, Deputy Manager, Office of SBI, Sector 14, Chandigarh, AW8 Amit Sharma, Junior Assistant, Medical Record Department, GMCH, Sector 32, Chandigarh; AW9 Saroj Kundra, Senior Social Security Assistant, office of Regional Provident Fund Commissioner, Sector 17, Chandigarh; AW10 Mohinder Batra, Senior Social Security Assistant, office of Regional Provident Fund Commissioner, Sector 17, Chandigarh and AW11 Davinder Kumar, Account Manager, Office of M/s Keshav Security Services Pvt. Ltd., Manimajra. On 14.02.2023 the workman closed her evidence in affirmative.

9. On the other hand, management No.1 & 4 examined MW1 Raj Kumar Chaudhary - Senior Assistant, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'. On 21.04.2023 Learned Law Officer for management No.1 & 4 closed evidence.

10. At the stage of management's evidence, the management No.2 & 3 failed to pay the cost imposed vide order dated 24.05.2023 and none appeared on their behalf on 26.05.2023. Under the circumstances, the management No.2 & 3 were proceeded against *ex parte* vide order dated 26.05.2023.

11. I have heard the arguments of Learned Representative for the workman and Learned Law Officer for management No. 1 & 4 and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 :

12. Onus to prove this issue is on the management No.1 & 4.

13. Management Nos.1 & 4 have raised the objection that there is no employer-employee relationship between management No.1 & 4 and workman. In the preliminary objection management No.2 & 3 have submitted that at the time of taking over the contract by the management No.2 & 3, the workman was already working in GMCH, Chandigarh i.e. management No.1 under the previous service provider. AW6 / Anu Sharma in her cross-examination conducted by the Law Officer on behalf of management No.1 & 4 has stated that no appointment letter was issued by the management. The workman's own witness AW9 Saroj Kundra - Senior Social Security Officer, office of Regional Provident Fund Commissioner in her cross-examination admitted as correct that EPF dues of Ms. Anu Sharma has been deposited by the contractor M/s Good House Keeping in her account. AW9 admitted as correct that GMCH has never deposited any dues of the workman in the EPF office and workman has also withdrawn all her dues on 12.05.2016 from her EPF Account. AW10 Mohinder Batra - Senior Social Security Assistant, office of Regional Provident Fund Commissioner, Sector 17, Chandigarh in his cross-examination conducted by the Law Officer on behalf of management No.1 & 4 admitted as correct that EPF dues of Ms. Anu Sharma has been deposited by the contractor M/s Sudarshan Facilities Pvt. Ltd. in her account. AW10 admitted as correct that GMCH has never deposited any dues of the workman in the EPF office. AW11 Devinder Kumar, Accounts Manager of M/s Keshav Security Services in his examination-in-chief stated that the contract period of M/s Keshav Security Services with GMCH was from 1st October 2012 to 5th August 2017. Anu Sharma was already working with GMCH at the time of allotment of contract to M/s Keshav Security Service. When put to cross-examination by management No.1 & 4 AW11 stated that contract was awarded to M/s Keshav Security Services by GMCH in open tender process. As per instructions of the GMCH, old employees already working with the GMCH were to be retained. AW2 Sukhjit Kaur - Social Security Assistant, EPF Organisation when put to cross-examination by management

No.1 & 4 stated that it is the duty of the employer to deposit the contribution of the employees to the EPFO Department. As per record the employer code of the workman is PB-CHD-29147, who had deposited the contribution of the workman. AW4 Surinder Kumar - Branch Manager, ESIC in his examination-in-chief stated that the employer code No.17200217530011002 and ESI number of Anu Sharma is 1707734777 for the period w.e.f. 01.10.2012 to 31.05.2015. AW5 Gurmeet Singh, Assistant, ESIC Branch in his cross-examination stated that it is the duty of the employer to deposit the contribution of the employees to the ESI Department. As per the record, the employer of the workman is having employer code No.17200217530011002. From the version of aforesaid AWs it is duly proved on record that the workman was covered under the ESI and EPF scheme. From the date of appointment i.e. September 2003 till 21.09.2014 the workman remained working under various contractors and lastly under the contractor M/s Keshav Security Services i.e. management No.2 & 3. During service under the various contractors the workman was deployed as File Restorer with GMCH, Sector 32, Chandigarh. Thus, the workman is employee of the contractor. There is no direct relationship of employer & employee between management No.1 & 4 and the workman.

14. Accordingly, this issue is decided in favour of management No.1 & 4 and against the workman.

Issue No. 1 :

15. Onus to prove this issue is on the workman.

16. Under this issue workman, Anu Sharma stepped into witness box as AW6 and vide her affidavit Exhibit 'AW6/A' deposed the averments of claim statement in toto, which are not reproduced here for the same of brevity. AW6 supported her oral versions with documents Exhibit 'C1' to Exhibit 'C5'.

Exhibit 'C1' is photocopy of documents of ESI Corporation relating Anu Sharma, workman (Colly).

Exhibit 'C2' is photocopy of Letter No.GMCH-MRD/2011/2263 dated 04.10.2011 issued by Dr. Varinder Saini, Head, Medical Records Department, GMCH to the Additional Director (Admn.), GMCH on the subject regarding transfer of File Restorers on contract basis in Government Medical College & Hospital, Sector 32, Chandigarh.

Exhibit 'C3' is photocopy of Office Memo No.104/76/2011-AVD.I dated 18.10.2013 issued by Government of India, Ministry of Personnel & Public Grievances & Pensions, Department of Personnel & Training on the subject of guidelines regarding handling of complaints in Ministries / Departments.

Exhibit 'C4' is photocopy of Memo No.19/C2/2021/PEO(GeM)/885 dated 25.20.2021 issued by the Planning & Evaluation Organisation, Finance Department, Chandigarh Administration on the subject regarding additional terms and conditions available on GeM.

Exhibit 'C5' is photocopy of passbook of saving bank account No.620210110003492, Bank of India pertaining to workman Anu Sharma.

17. AW2 Sukhjot Kaur deposed that she has brought the summoned record of provident fund of Anu Sharma for the period w.e.f. 01.10.2012 to September 2014 and proved the certified copy of the same as Exhibit 'AW2/1'. She further deposed that the remaining summoning record from 2004 to September 2012 is not with her.

18. AW5 Gurmeet Singh deposed that he is summoned witness and has brought the summoned record related to Ms. Anu Sharma. The statement of account bearing IP No.1707734777 of Ms. Anu Sharma with effect from 01.01.2012 to 31.10.2015 is exhibit 'AW5/1', ledger sheet pertaining to account of

Ms. Anu Sharma is Exhibit 'AW5/2', statement of CPF deposited from the side of the workman is Exhibit 'AW5/3' for the period 2014 to 2015 showing the payment of ₹ 4,425/-, statement of account for the year 2015 showing the payment of ₹15,000/- is Exhibit 'AW5/4' and statement of account for the year 2016 showing Nil balance is Exhibit 'AW5/5'.

19. AW7 Mohinder Soni deposed that he has brought the summoned record of Account No.10445129683. As per record entry dated 07.05.2013, 08.06.2013, 05.07.2013, 06.08.2013, 06.09.2013, 07.10.2013, 07.11.2013, 06.12.2013, 06.01.2014, 06.02.2014, 06.03.2014, 05.04.2014, 06.05.2014, 06.06.2014 and 07.07.2014, 06.08.2014, 05.09.2014 and 09.10.2014 and entry of 29.10.2013, 20.10.2014 were the bonus transferred in the bank account of Anu Sharma. All these payments are made from the GMCH to Anu Sharma. He proved the copy of the document as Exhibit 'AW7/A.'

20. AW8 Amit Sharma deposed that he has brought the summoned record i.e. appreciation letter No.GMCH-MRD/2011/2263 dated 04.10.2011, which was issued by the Head of the Department, Medical Record Department to Additional Director (Admin.), GMCH. In this letter HOD, Medical Record Department had appreciated the services of Fire Restorer since last eight year. He proved the same letter as Exhibit 'AW8/1' wherein there is no reference of any Security Agency / Outsource agency and neither this letter was referred to any security agency. The management used to appreciate their employees for their good services rendered by them to the employer / institute.

21. AW9 Saroj Kundra deposed that he is summoned witness and has brought the summoned record i.e. member ledger of the employee bearing No. 21910/896 pertaining to Ms. Anu Sharma for the period from 15.09.2004 to 30.09.2012 and proved the copy of the same as Exhibit 'AW9/1'.

22. AW10 Mohinder Batra deposed that he is summoned witness and has brought the summoned record i.e. member ledger of the employee bearing No. 29147/4850 pertaining to Ms. Anu Sharma for the period from 01.10.2012 to 30.09.2014 and proved the copy of the same as Exhibit 'AW10/1'.

23. AW11 Devinder Kumar deposed that he has brought the summoned record. The contract of technical labour supply was granted to M/s Keshav Security Services Pvt. Ltd. on 01.01.2012. The contract period of M/s Keshav Security Services with the GMCH was from 1st October, 2012 to 5th August 2017. Anu Sharma was already working in the GMCH at the time of allotment of contract to M/s Keshav Security Service. They have not made any inquiry regarding the workman Anu Sharma as he was working under the GMCH. He did not know the period from which Anu Sharma was working in the GMCH.

24. Testimony of AW8 Amit Sharma, AW9 Saroj Kundra, is not controverted by management No.1 & 4 during their cross-examination as the opportunity to cross-examination of aforesaid AWs given to management No.1 & 4 was recorded was Nil. Testimony of AW9 Saroj Kundra, AW10 Mohinder Batra and AW11 Devinder Kumar is not controverted by the management No.2 & 3 as the opportunity of cross-examination of aforesaid AWs given to management No.2 & 3 is recorded as Nil.

25. Testimony of AW3 Rajesh Kumar and AW4 Surinder Kumar being incomplete cannot be read into evidence as AW3 did not appear for his cross-examination and AW4 did not appear for his remaining examination in chief.

26. On the other hand, management No.1 & 4 has examined MW4 Raj Kumar Chaudhary, who vide his affidavit Exhibit 'MW4/A' deposed that Ms. Anu Sharma was deployed as File Restorer by the service provider M/s Keshav Security Services (P) Ltd., New Delhi in GMCH. As per service agreement, the persons so deployed by the service provider for execution of agreement shall be his employees for all intents & purposes

and in no case, there shall be any relationship of employer & employees between the said persons & the GMCH, either implicitly or explicitly. He further deposed that the worker so deployed by the contractor in the year 2012 were paid wages as per the rates fixed by the ALC from time to time. Thereafter w.e.f. 12.11.2014, it was decided by the competent authority to give wages to the above said worker as per rates fixed by the Deputy Commissioner, U.T., Chandigarh. Ms. Anu Sharma workman was called by the Inquiry Officer, during an internal inquiry of MRD Section, to give her statement regarding the anonymous complaints. But, she left the office without giving the statement in spite of repeated telephonic messages. Ms. Anu Sharma thus, mis-conducted and did not cooperate in the inquiry proceedings. Hence, the contractor was issued show cause notice for the misconduct and insubordination of his employee. The reply to show cause notice submitted by Ms. Anu Sharma through the contractor was considered and found unsatisfactory. Accordingly, the contractor was asked that the service of Ms. Anu Sharma be replaced for this institute and utilize her service elsewhere outside the premises of GMCH-32, Chandigarh vide this office letter No.GMCH-1EA(2)-(10)-2014/33899-900 dated 17.09.2014. The persons so deployed by the Service Provider for the execution of agreement shall be his employees for all intents & purposes and in no case, there shall be any relationship of employer & employees between the said persons & the GMCH, either implicitly or explicitly.

27. From the oral as well documentary evidence led by the parties, it is duly proved on record that the workman being contractual employee was deployed with GMCH - 32, Chandigarh from September 2003 and she continuously worked as File Restorer with GMCH up to 21.09.2014. The workman performed her duty during September 2003 to 21.09.2014 under various contractors and lastly under M/s Keshav Security Services Pvt. Ltd. i.e. management No. 2 & 3. During the deployment of workman with GMCH - 32, Chandigarh there was no complaint against her act & conduct. In this regard, management No.2 & 3 in its joint written statement pleaded that the answering managements recommended her case to give her another chance as there had been no complaint about her work / behaviour in the past 13 years. The management No.1 & 4 have pleaded that the workman was called by the Inquiry Officer during an internal inquiry of MRD Section to give her statement regarding the anonymous complaints but she left the office without giving the statement in spite of repeated telephonic messages. The workman thus mis-conducted and did not cooperate in the inquiry proceedings. Hence, the contractor was issued show cause notice for the misconduct and insubordination of his employees. The reply to show cause notice submitted by the workman through the contractor was considered and found unsatisfactory. Accordingly, the contractor was asked that services of workman Anu Sharma be replaced for the institute of GMCH, Sector 32, Chandigarh and the contractor may utilise her services elsewhere outside the premises of GMCH, Sector 32, Chandigarh. The aforesaid plea taken by the management No.1 & 4 that workman Anu Sharma did not cooperate in the inquiry proceedings of MRD Section does not stand proved because not even a single document relating to alleged internal inquiry of MRD Section is brought into evidence. Moreover, there could be no inquiry of any anonymous complaint. MW1 in his cross-examination admitted as correct that there are guidelines of the Chandigarh Administration as well as Government of India that no inquiry could be conducted against the employees on the basis of any anonymous complaint. Furthermore MW1 in his cross-examination admitted as correct that no notice was given to the workman to appear before the Inquiry Officer. AW11 in his cross-examination conducted by management No1. & 4 denied for want of knowledge about the inquiry conducted by the GMCH as they did not participate in the inquiry. On the other side MW1 in his cross-examination supported the plea of the workman that her work was appreciated by the management of GMCH, Sector 32, Chandigarh. In this regard MW1 admitted as correct that one authority of GMCH appreciated the role & working of the workman and letter was written to the Additional Director (Admin). MW1 admitted as correct that in the letter dated 04.10.2011 it is specifically mentioned that the workman is working from last 8 years. From the discussion made above, it is duly established that there was no complaint against the work & conduct of the workman. There is no document to show that GMCH - 32 ever held any internal inquiry of MRD Department in relation to any anonymous complaint. If for the sake of argument it is assumed that GMCH - 32 held any internal

inquiry of MRD department, in that situation also there is nothing on record to show that the workman was ever issued any notice by the GMCH - 32 to appear as a witness in the said inquiry proceedings. Under the circumstances, letter dated 17.09.2014 addressed from GMCH - 32, Chandigarh to the management No.2 & 3 requesting to replace the workman from the institute of GMCH - 32 to any other place is without any basis.

28. As proved from the documents on record, the workman has completed 240 days of continuous service preceding her termination (service terminated on 21.09.2014) in 12 calendar months. With this the workman fulfil the requirement of Section 25-B of the ID Act. In order to terminate a workman, who falls under Section 25-B of the ID Act, the employer is required to comply with certain conditions incorporated in Section 25-F of the ID Act. For better appreciation Section 25-F of the ID Act is reproduced as below :—

"25F. Conditions precedent to retrenchment of workmen - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

In this present case, the employer / management No.2 & 3 neither issued any prior notice of one month mentioning therein the grounds of termination nor paid notice pay in lieu of notice period nor paid any retrenchment compensation to the workman. Besides, neither any show cause notice nor any charge sheet is ever issued to the workman. The employer / management No.2 & 3 did not conduct any domestic inquiry against the workman. The employer i.e. management No.2 & 3 did not adduce any oral or documentary evidence and at the stage of managements' evidence preferred to be proceeded against ex-parte which raises strong presumption against them / contractor. AW11 Devinder Kumar, Accounts Manager of M/s Keshav Security Services in his examination-in-chief stated that they have not made any inquiry regarding the workman Anu Sharma as she was working under the GMCH. In the present case, neither it is pleaded nor it is proved by the management No.1 & 4 that they have conducted any domestic inquiry against alleged misconduct of the workman for non-joining the internal inquiry for MRD Department. MW1 in his cross-examination admitted as correct that Inquiry Officer or the management of GMCH has never given any notice of termination to the workman. In view of the reasons recorded above, the verbal termination of the workman on dated 21.09.2014 is in violation of Section 25-F of the ID Act. Consequently, the termination of the services of the workman is illegal and is hereby set aside. The workman is held entitled to reinstatement with continuity of service and 50% back wages.

29. Accordingly, this issue is decided in favour of the workman and against management No.2 & 3.

Relief :

30. In the view of foregoing finding on the issues above, this industrial dispute is allowed qua management No. 2 & 3 to the effect that workman is entitled for reinstatement with continuity of service and 50% back wages. Claim qua management No.1 & 4 is declined. Management No. 2 & 3 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

The 02.06.2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.

Secretary Labour,
Chandigarh Administration.

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